



Circular CSSF 21/785

Replacement of the prior
authorisation obligation by
a prior notification
obligation in the case of
material IT outsourcing

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Re: Replacement of the prior authorisation obligation by a prior notification obligation in the case of material IT outsourcing

Luxembourg, 14 October 2021

Ladies and Gentlemen,

**To all credit institutions, PFS,
payment institutions and
electronic money institutions**

**To all investment fund
managers subject to Circular
CSSF 18/698**

1. This circular amends Circulars CSSF 12/552, as amended, CSSF 17/656, CSSF 20/758 and CSSF 17/654, as amended, by replacing the prior authorisation requirement by a prior notification requirement in the case of material IT outsourcing.
2. In this context, and in relation to IT outsourcing relying on a cloud computing infrastructure, the requirements relating to the contractual clauses under points 31.a., b. and c. have been further detailed.

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I. Amendment of Circular CSSF 12/552, as amended

3. In Chapter 7 of Part II, point 182 of Section 7.4.1 is amended:

- a. by adding the following, marked hereafter in bold, to the 8th bullet point, which now reads as follows: ***"The institution which intends to outsource a material activity must obtain prior authorisation from the competent authority. A notification to the competent authority justifying that the conditions laid down in this Circular are complied with is sufficient where the institution resorts to a Luxembourg credit institution or a support PFS. This bullet point does not apply to IT outsourcing¹."***
- b. by creating new indents, marked hereafter in bold, inserted immediately after the 8th bullet point referred to in point a. above:
 - i. ***"Any institution which intends to rely on a material IT outsourcing² must submit a prior notification concerning its project to the competent authority using the forms available on the CSSF website. This notification must be provided at least three (3) months before the planned outsourcing comes into effect. When resorting to a support PFS governed by Articles 29-3 to 29-6 of the LFS, this period shall be reduced to one (1) month before the planned outsourcing comes into effect. Any outsourcing for which the notification does not comply with these two (2) requirements (use of the correct form; compliance with the time limits) will be considered as non-notified."***
 - ii. ***In the absence of a reaction from the competent authority (additional information request, partial or total refusal of the project), the institution may implement the material IT outsourcing upon expiry of the time limit of three (3) or one (1) month(s), respectively, starting from the notification date."***
 - iii. ***In case of reaction by the competent authority (additional information request, partial or total refusal***

¹ IT outsourcing means an agreement of any form between a supervised entity and a service provider (including of the same group) by which that service provider performs an IT process, an IT service or an IT activity that would otherwise be undertaken by the supervised entity itself. The processes, services or activities provided shall exclusively be IT-related.

² FAQs on the assessment of the materiality of an IT outsourcing are available on our website (<https://www.cssf.lu/en/Document/faq-on-the-assessment-of-it-outsourcing-materiality/>)

of the project), the competent authority may decide to suspend the time limit.

- iv. In any event, the supervised institutions remain fully responsible for complying with all the relevant laws and regulations as regards the planned outsourcing projects.*
- v. The absence of a reaction from the competent authority during the notification process is without prejudice to the supervisory measures or the application of binding measures and/or administrative sanctions which it might take at a later stage as part of the ongoing supervision, where it appears that these outsourcing projects do not comply with the applicable legal and regulatory framework. "*

II. Amendment of Circular CSSF 17/656

4. In Chapter 1, point 182 of Section 1 is amended:

- a. by adding the following, marked hereafter in bold, to the 8th bullet point, which now reads as follows: "The institution which intends to outsource a material activity shall obtain prior authorisation from the competent authority. A notification to the competent authority stating that the conditions laid down in this circular are complied with is sufficient where the institution resorts to a Luxembourg credit institution or support PFS. **This bullet point does not apply to IT outsourcing¹.**"*
- b. by creating new indents, marked hereafter in bold, inserted immediately after the 8th bullet point referred to in point a. above:*
 - i. "Any institution which intends to rely on a material IT outsourcing² must submit a prior notification concerning its project to the competent authority using the forms available on the CSSF website. This notification must be provided at least three (3) months before the planned outsourcing comes into effect. When resorting to a support PFS governed by Articles 29-3 to 29-6 of the LFS, this period shall be reduced to one (1) month before the planned outsourcing comes into effect. Any outsourcing for which the notification does not comply with these two (2) requirements (use of the correct form; compliance with the time limits) will be considered as non-notified.*

- ii. *In the absence of a reaction from the competent authority (additional information request, partial or total refusal of the project), the institution may implement the material IT outsourcing upon expiry of the time limit of three (3) or one (1) month(s), respectively, starting from the notification date.*
- iii. *In case of reaction by the competent authority (additional information request, partial or total refusal of the project), the competent authority may decide to suspend the time limit.*
- iv. *In any event, the supervised institutions remain fully responsible for complying with all the relevant laws and regulations as regards the planned outsourcing projects.*
- v. *The absence of a reaction from the competent authority during the notification process is without prejudice to the supervisory measures or the application of binding measures and/or administrative sanctions which it might take at a later stage as part of the ongoing supervision, where it appears that these outsourcing projects do not comply with the applicable legal and regulatory framework. "*

III. Amendment of Circular CSSF 20/758

- 5. In Chapter 7 of Part II, point 184 of Section 7.4.1 is amended:
 - a. by adding the following, marked hereafter in bold, to the 8th bullet point, which now reads as follows: *"The institution which intends to outsource a material activity must obtain prior authorisation from the competent authority. A notification to the competent authority stating that the conditions laid down in this Circular are complied with is sufficient where the institution resorts to a Luxembourg credit institution or a support PFS. **This bullet point does not apply to IT outsourcing**".*
 - b. by creating new indents, marked hereafter in bold, inserted immediately after the 8th bullet point referred to in point a. above:
 - i. ***"Any institution which intends to rely on a material IT outsourcing² must submit a prior notification concerning its project to the competent authority using the forms available on the CSSF website. This notification must be provided at least three (3) months before the planned outsourcing comes into effect. When resorting to a***

support PFS governed by Articles 29-3 to 29-6 of the LFS, this period shall be reduced to one (1) month before the planned outsourcing comes into effect. Any outsourcing for which the notification does not comply with these two (2) requirements (use of the correct form; compliance with the time limits) will be considered as non-notified.

- ii. In the absence of a reaction from the competent authority (additional information request, partial or total refusal of the project), the institution may implement the material IT outsourcing upon expiry of the time limit of three (3) or one (1) month(s), respectively, starting from the notification date.*
- iii. In case of reaction by the competent authority (additional information request, partial or total refusal of the project), the competent authority may decide to suspend the time limit.*
- iv. In any event, the supervised institutions remain fully responsible for complying with all the relevant laws and regulations as regards the planned outsourcing projects.*
- v. The absence of a reaction from the competent authority during the notification process is without prejudice to the supervisory measures or the application of binding measures and/or administrative sanctions which it might take at a later stage as part of the ongoing supervision, where it appears that these outsourcing projects do not comply with the applicable legal and regulatory framework. "*

IV. Amendment of Circular CSSF 17/654, as amended

- 6. In point 26 of Part II:
 - a. The first paragraph of point b. is amended by adding the following, marked hereafter in bold, and now reads as follows: "*In case of use of a cloud computing infrastructure outsourcing for a material activity within the meaning of paragraph 10, the ISCR shall notify the competent authority **at least one (1) month before the planned outsourcing comes into effect** if one of the following conditions is fulfilled:*"
 - b. The following amendments and additions, marked hereafter in bold, are made to point c., which now reads as follows: "*In case of use of a cloud computing infrastructure outsourcing for a material*

activity within the meaning of paragraph 10, the ISCR shall ~~request prior authorisation from~~ **notify** the competent authority **at least three (3) months before the planned outsourcing comes into effect**, if none of the conditions listed in point b. are fulfilled."

- c. The following amendments and additions, marked hereafter in bold, are made to point d., which now reads as follows: **"An authorisation notification at least three (3) months before the planned outsourcing comes into effect** is still required in the particular case where an institution authorised under Articles 29-3 or 29-4 of the LFS acts as intermediary and not as resource operator between an ISCR and a cloud computing service provider."
- d. New points, numbered from e. to i., marked hereafter in bold, are created immediately after point d. above:
 - i. **"Any notification shall be submitted by using the forms available on the CSSF website and within the time limits set out under points 26.b. to 26.d.. Any outsourcing for which the notification does not comply with these two (2) requirements (use of the correct form; compliance with the time limits) will be considered as non-notified.**
 - ii. **In the absence of a reaction from the competent authority (additional information request, partial or total refusal of the project), including in relation to the derogation request referred to under point 31.c., the institution may implement the material IT outsourcing upon expiry of the time limit of three (3) or one (1) month(s), respectively, starting from the notification date.**
 - iii. **In case of reaction by the competent authority (additional information request, partial or total refusal of the project), including in relation to the derogation request referred to under point 31.c., the competent authority may decide to suspend the time limit.**
 - iv. **In any event, the supervised institutions remain fully responsible for complying with all the relevant laws and regulations as regards the planned outsourcing projects.**
 - v. **The absence of a reaction from the competent authority during the notification process is without prejudice to the supervisory measures or the application of binding measures and/or administrative sanctions which it might take at a later stage as part of the ongoing supervision, where it appears that these outsourcing projects do not**

comply with the applicable legal and regulatory framework."

- e. Consequently, the former points e., f., g. and h. are re-numbered j., k., l. and m., respectively.

7. In point 31 of Part II:

- a. The following addition, marked hereafter in bold, is made to point a., which now reads as follows: *"The service contract signed with the cloud computing service provider shall be subject to the law of one of the EU countries. **Where the contract signed is a group contract aiming at allowing the ISCR as well as other entities of the group to benefit from the cloud computing services, the contract may also be subjected to the law of the country of the signing group entity, including where this country is outside the European Union.**"*
- b. The following addition, marked hereafter in bold, is made to point b., which now reads as follows: *"The service contract signed with the cloud computing service provider shall provide for a resiliency of the cloud computing services provided to the ISCR in the European Union. In this way, in case of spread of processing, data and systems over different data centres worldwide, at least one of the data centres shall be located in the European Union and shall, if necessary, allow taking over the shared processing, data and systems in order to operate autonomously the cloud computing services provided to the ISCR. **However, where the contract signed is a group contract aiming at allowing the ISCR as well as other entities of the group to benefit from the cloud computing services, the resiliency of the cloud computing services in the European Union is not a requirement, but it shall be taken into account in the entity's risk analysis.** If all data centres backing the cloud computing services are located within the European Union, the resiliency requirement for the cloud computing services in the European Union is by default fulfilled."*
- c. The following amendments, marked hereafter in bold, are made to point c., which now reads as follows: *"**In its outsourcing notification,** the ISCR may ~~apply for~~ **request** a special derogation to the competent authority where the requirements laid down in points (a) and (b) above cannot be fulfilled in case of a material outsourcing. This ~~application request~~ **request** for derogation shall be supported by detailed arguments justifying the use of this cloud computing service provider and stating precisely the*

resilience measures planned in case of this provider's failure or failure of connections allowing access thereto."

V. Transitional measures and entry into force

8. The transitional measures as regards the outsourcing authorisation applications submitted to the CSSF before the entry into force of this circular will be defined in a communiqué.
9. This circular enters into force on 15 October 2021.

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